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tificate of qualification. The object of the statute was the protection of the public. See *Swanger v. Mayberry*, 59 Cal. 91; *Harrison v. Jones*, 80 Ala. 412; *Gardner v. Tatum*, 81 Cal. 370; *Puckett v. Alexander*, 102 N. C. 95, 3 L. R. A. 43; *Underwood v. Scott*, 43 Kans. 714; *Mayfield v. Nale*, 26 Ind. App. 240; *Bohn v. Lowery*, 77 Miss 424; *Haworth v. Montgomery*, 9, Tenn. 16; *Leman v. Houseley*, L. R. 10 Q. B. 66; *Taliaferro v. Moffett*, 54 Ga. 150, 153; *Aiken v. Blaisdell*, 41 Vt. 655; *Ottaway v. Lowden*, 55 N. Y. App. Div. Rep. 410; but see *Smythe v. Hanson*, 61 Mo. App. 285. And if the statute had expressly provided that any contract for medical services by an unlicensed practitioner should be void, the note would undoubtedly have been void in the hands of an innocent holder for value. See *Larson v. First National Bank*, 62 Neb. 303, 87 N. W. 18; *Weed v. Bond*, 21 Ga. 195; *Sondheim v. Gilbert*, 117 Ind. 71; *Voreis v. Nussbaum*, 131 Ind. 267; 31 N. E. 70; *Texarkana & Fort Smith R. Co. v. Bemis Lumber Co.*, 67 Ark. 542, 549, 55 S. W. 944; *German Bank v. DeShon*, 41 Ark. 331, 339, 340; *Hatch v. Burroughs*, 1 Woods 439, 448; *Angier v. Smith*, 101 Ga. 844, 28 S. E. 167; *Traders' Bank v. Alsop*, 64 Iowa 97; *Rhodes v. Beall*, 73 Ga. 641.

That which a statute has directly and positively declared to be void, cannot have life for any purpose. A note that is made void by statute cannot be given validity by a transfer before maturity to an innocent holder for value. The necessity of preserving the integrity and free circulation of commercial paper is not so controlling as to reach a case of this kind. Every one is charged with notice of the invalidity of the paper. It might seem that a note that is void as between the parties, because arising out of a prohibited and unlawful transaction, should be dead for all purposes, on the ground that being tainted and poisoned by its connection with what the law has stamped as criminal, it should be against public policy to give it life even for the purpose of protecting the innocent purchaser for value before maturity. A note of this kind, like the note made void by statute, does not ordinarily carry upon its face any ear-marks of invalidity. In each case, the note grows out of a transaction that is prohibited and made unlawful by statute. Why should the results of knowledge of invalidity be imposed upon the innocent holder in the one case any more than in the other? In making an act a crime why has not the legislature thereby by implication made all contracts growing out of the act just as thoroughly void as they would be if the statute had expressly declared them to be void? Why may not knowledge of the provisions of the law and of the facts on the part of the innocent transferee for value before maturity be imputed in the one case as well as in the other? And why do not the paramount demands of the law merchant apply in the one case as well as in the other? These questions naturally suggest themselves, and are certainly not without significance. But notwithstanding the apparent similarity of the two cases, the courts at present very generally hold that the innocent purchaser for value before maturity of paper growing out of a transaction that is prohibited and made unlawful by statute is protected unless the paper is also made void by the express terms of the statute. The case under consideration was undoubtedly decided according to the weight of modern authority. See cases cited *supra*.

PARTIES—JOINING REPRESENTATIVE OF DECEASED JOINT OBLIGOR—SURVIVORS.—There has been some conflict of authority respecting the effect

of the general reformatory provisions of the codes upon the method of procedure in enforcing a joint demand where one debtor dies. At common law the survivors alone were liable at law, and the estate of the decedent was available only in equity, after the legal remedies against the survivors had been exhausted. The Supreme Court of Indiana held in an early case, *Braxton v The State*, 25 Ind. 82, that the provisions of the code abolishing the distinction between actions at law and suits in equity, and the further provision allowing all persons who have an interest in the controversy adverse to the plaintiff or who are necessary parties to a complete determination of the question involved, to be made defendants, destroyed this restriction of the common law, and made it possible to join the personal representative of the deceased with the surviving co-obligors as defendants in an action on the contract. The Supreme Court of South Carolina, in several early decisions, adopted the same rule. *Trimmer v. Thomson*, 10 S. C. 164; *Susong v. Vaiden*, 10 S. C. 247; *Wiesenfeld v. Byrd*, 17 S. C. 106. More recently the Supreme Court of Wyoming has approved the same interpretation of the code. *Chadwick v. Hopkins* (1893), 4 Wyo. 379, 34 Pac. 899.

In most of the code states, however, the contrary opinion prevailed. The Court of Appeals of New York, in the leading case of *Voorhis v. Child's, ex'r.*, 17 N. Y. 354, declared that these rules of the common law were in no respect altered by the general provisions of the code, and that the plaintiff must still exhaust his remedy at law against the survivors before resorting to the equitable liability of the decedent's estate. To meet this interpretation of the codes, many states passed special statutes authorizing an action to be brought in the first instance against the survivors and the personal representative of the deceased. This was done in Ohio, Iowa, Kentucky, Missouri, Kansas, Arkansas, Minnesota, Colorado, South Dakota and New York, with varying degrees of completeness.

The New York statute has been construed in the recent case of *Potts v. Dounce* (1903), 173 N. Y. 335, 66 N. E. 4, resulting in the announcement of a rather curious doctrine. The statute, which is § 758 of the code of civil procedure, provides, among other things, that "the estate of a person or party jointly liable upon contract with others, shall not be discharged by his death, and the court may make an order to bring in the proper representative of the decedent, when it is necessary to do so for the proper disposition of the matter." The court holds that this statute makes a material alteration in the law, imposing a liability where none existed before, and that such liability is *legal*. The personal representative of the deceased joint debtor is therefore *legally* liable to the creditor. But the court goes on to say that the procedure has not been changed, but remains as it was when the liability was equitable only, and that in order to recover against such representative the plaintiff must allege and prove the insolvency, or inability to pay, of the survivors. In other words, in order to state a *legal* cause of action the plaintiff must "show an *equitable* reason" for joining the representative of the deceased. This seems like a substantial contradiction in terms. It results, however, in leaving the creditor in practically the same position in which he was before the statute was passed, for it renders the joinder of the survivors wholly useless. If they can be joined only in cases where they are insolvent or unable to pay, it is difficult to see what advantage accrues to the plaintiff

from joining them. In effect the creditor must still rely upon the equitable liability of the personal representative of the deceased joint debtor.

CODE PLEADING—AMENDMENT—FORMS OF ACTION.—There is a substantial uniformity among the statutes allowing amendments in those states which have adopted the "Code" procedure, the general limitation upon the power of the courts in this regard being that the "claim or defense" shall not be substantially changed. No provision of the Codes has given rise to more assignments of error than these statutes. It has been held very generally that under the statute any amendment may be permitted which does not introduce a new and distinct cause of action. *Williams v. Williams* (1902), 115 Ia. 520, 88 N. W. 1057; *Anderson v. Groesbeck* (1899), 26 Colo. 3, 55 Pac. 1086; *Louisville, etc., R. R. Co. v. Beauchamp* (1900), — Ky. —, 55 S. W. 716; *Chance v. Jennings* (1901), 159 Mo. 544, 61 S. W. 177. In the case of *Ellis v. Flaherty* (1902), — Kan. —, 70 Pac. 586, the court declared in so many words that the term "claim," as used in the statute, was synonymous with "cause of action."

Wisconsin, however, at an early date, gave the statute a more restricted interpretation, and applied a test which was hardly in accord with the spirit of the code, if indeed it did not depart from the letter. In *Gates v. Paul* (1903), — Wis. —, 94 N. W. 55, the court has given the question a very thorough re-examination, citing many cases and quoting the hostile comments of text-writers, but decided not to abandon, at this time, a rule which has obtained a firm foothold in the jurisprudence of the state. The rule as thus recently reaffirmed is that the term "claim" should be construed as meaning "form of action" instead of "cause of action." The Code has confessedly abolished forms of action, and has substituted in their place a single "civil action," applicable alike to cases at law and in equity. How, then, the "form" of the action can still be looked to as indicative of the right to amend, is difficult to understand. As Mr. Pomeroy has said, in his CODE REMEDIES, § 108, "It is simply an abuse of language to say that the ancient forms of action have been abolished, and that any of the rules which were based upon the existence of these forms, and had no relevancy except in connection therewith, are retained."

The court reviews the New York cases on the subject, acknowledges that most of the states having similar provisions give them a much broader scope than its own decisions approve, and says: "It may be that it was a mistake to hold, as this court did, very early after the Code was adopted here, that a change in the form of the action is a substantial change in the claim within the meaning of the statute. *Carmichael v. Argard*, 52 Wis. 607. Certainly, that is out of harmony with New York, the home of our Code, as we have seen. But it is too late to change the practice now." In a subsequent case, *Klipstein v. Raschein* (1903), — Wis. —, 94 N. W. 63, decided at the same term, the rule was restated and followed. This anomaly in Code procedure seems, therefore, to have become permanently established in Wisconsin.

CONFLICT OF LAWS—PUBLIC POLICY—AGREEMENT TO STIFLE PROSECUTION.—The case of *Kaufman v. Gerson* [1903], 2 K. B. 114, decided last May,